



Supreme Court of the United States

OCTOBER TERM, 1943

No.

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE,
CRESCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER
and FRANCISCO MARTINEZ,

Petitioners,

against

UNITED FRUIT COMPANY,

Respondent.

PETITIONERS' BRIEF ON APPLICATION FOR WRIT OF CERTIORARI

I

Statutes Involved

Ch. 18, Tit. 46, U. S. C., Sec. 594:

"Right to wages in case of improper discharge. Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned. (R. S. Sec. 4527.)"

II

Opinions Below

The opinion of the Circuit Court of Appeals was made on February 29, 1944 and is reported in 141 Fed. (2d) 191. The opinion of the District Court is reported as *Newman v. United States et al.* at 50 Fed. Supp. 66. The order for mandate was made and filed May 23, 1944.

III

Jurisdiction of This Court

The jurisdiction of this Court is to be found in Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

IV

Statement of the Case

A full statement is to be found in the petition and is, therefore, omitted here for brevity.

V

Question Involved

The case presents the question of the proper construction and application of Chap. 18, Title 46, United States Code, Sec. 594, which provides, in substance, that when seamen are unjustifiably discharged under certain circumstances they are to receive, in addition to their wages, an additional month's wages as damages. Petitioners contend that one month's wages include the cash value of any emoluments other than money which they were to receive

for their services; respondents, that damages are to be measured by the cash payments provided in the shipping articles.

VI

Error Relied On and Summary of Arguments Specified as Grounds of Appeal

The construction of a statute of great importance to maritime labor in a manner unnecessarily restrictive of the rights of seamen, and in apparent conflict with the decision of a Circuit Court of Appeals for another Circuit, requires review by certiorari.

The judgment below curtailed petitioners' enjoyment of a right conferred by Congress. Wages include all the compensation received by seamen, whether in money or in kind, and a statute measuring damages in terms of wages should be construed to extend to the value of emoluments as well as to money payments.

This question was raised in the Court below in the specified grounds of appeal (R. 31, 32).

VII

The Construction Placed Upon the Statute by the Court Below Defeated the Legislative Intent and Deprived Petitioners of Substantial Rights

The facts are not in dispute. Petitioners were engaged as seamen aboard the SS. Querigua, a vessel owned and operated by the respondent (R. 6, 7, 12). After their employment, but before the voyage began, they were unjustifiably discharged (R. 12). They thus became entitled to one month's wages in addition to wages actually earned. *Ch. 18, Tit. 46, U. S. C., Sec. 594.* They have a decree for the amount of cash payment they would have received in

the course of a month's service, but their claim for the value of one month's subsistence has been denied. The only question now presented is the meaning that Congress intended to give to the word "wages" as used in the statutes affecting seamen.

The statute itself contains no definition. The history of its enactment provides none.¹ The only guides to construction, therefore, are those to be found in the ordinarily accepted meaning of wages² and in the basic policy that motivated Congress.³ This Court has not considered the problem in any reported decision,⁴ so that this case presents an important question of Federal law which has not been but should be, settled by this Court.

A. Petitioners were to receive food and lodging for their services.

The shipping articles executed between the petitioners and the Master of their vessel as agent for the respondent were in the usual form (R. 12) as prescribed by statute. *Ch. 18, Tit. 46, U. S. C., Sec. 713*. The Master was to give them " * * * as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale". *idem*.

Unless seamen receive food in correct quantity and quality, the Master has violated their contract of employment and has denied them a substantial portion of their compensation. *The John L. Dimmick*, 13 Fed. Cas. No. 7355 (1858). The mere payment of "the sums against

¹ The present statute is derived from Act of June 7, 1872, c. 322, Sec. 21. There was no discussion of the meaning of wages either in Committee or on the floor of Congress. Congressional Globe, March 20, 1872.

² *United States v. Merriam*, 263 U. S. 179 (1923).

³ *Platt v. Union Pac. R.R. Co.*, 99 U. S. 48 (1879).

⁴ In *The Steel Trader*, 275 U. S. 388 (1928), Sec. 594 was considered, but the meaning of "wages" as there used was not in issue.

their names respectively expressed" at the end of a voyage on a vessel carrying short rations is not considered full compensation. The crew may still demand the cash equivalent of the provisions with which they were not supplied. *Ch. 18, Tit. 46, U. S. C., Sec. 665, The Rodney*, 20 Fed. Cas. No. 11993 (1831); *Billings v. Bousback*, 200 Fed. 523, 527 (C. C. A. 9, 1912); *Nelson v. Pastel*, 232 Fed. 682, 686 (C. C. A. 9, 1916). The total consideration payable to the petitioners under their contract of employment cannot be truly measured unless the value of their subsistence is taken into account.

A comparison of maritime wages with those paid in other industries to workers of equivalent, or even lesser skills, demonstrates to what extent seamen receive their compensation in the form of emoluments other than money. The shipping articles provided that petitioners were to receive compensation at monthly rates ranging from \$77.50 to \$127.50 in addition to subsistence (R. 3). Their work week consists of seven days of eight hours.⁵ Petitioner Batchelor, a bedroom steward, received but the equivalent of 32 cents an hour in money. National War Labor Board findings show an astonishing differential between this hourly rate and hourly rates ashore.⁶ The explanation is that seamen receive less in cash because they receive, in addition, their subsistence during their term of employment. Maritime labor costs are not unique in this respect; a simi-

⁵ Act of Mar. 4, 1915, c. 153, Sec. 2, as amended June 25, 1936, Tit. 46, U. S. C., Sec. 673.

⁶ Hotel maids in the City of New York, performing substantially the same kind of work under considerably less hazardous and more favorable conditions, earned \$16.85 weekly for a work week of 45 hours, exclusive of board and lodging, prior to November, 1942. This was found to be below the prevailing level and was increased by two dollars weekly. Even before the increase the hourly rate was 37 cents, exclusive of subsistence. Hotel Assoc. of New York, Inc., NWLB Case No. BWA-362, Nov. 21, 1942.

lar condition prevails in other industries, agriculture for example.⁷

Any statute, therefore, which purports to give to seamen a remedy in the form of wages or additional wages, if it is to reflect the actual economic factors involved, must consider wages as including all the items given in return for services on board a vessel.

B. Wages include food and lodging furnished to employees.

Where employment carries with it emoluments in addition to regular payments in cash, the aggregate value of all items has always been considered as the wages paid. This is the test provided by the Fair Labor Standards Act of 1938;⁸ by the Inflation Control Act of 1942;⁹ the Longshore and Harbor Workers Compensation Act;¹⁰ the Social Security Act;¹¹ the Current Tax Payment Act of 1943;¹² state unemployment insurance acts;¹³ and most state work-

⁷ Schwartz "On the Wage Structure of Agriculture", 57 Pol. Sc. Quar. No. 3, Sept. 1942.

⁸ Act of June 25, 1938, c. 676, Sec. 3; Tit. 29, U. S. C., Sec. 203(m).

⁹ Act of Oct. 2, 1942, c. 578, Sec. 10, as amended by Act of April 12, 1943; Tit. 50, U. S. C., Sec. 970.

¹⁰ Act of Mar. 4, 1927, c. 509, Sec. 2; Tit. 33, U. S. C., Sec. 902(13).

¹¹ Act of Aug. 14, 1935, c. 531, Tit. VIII, Sec. 811 as amended by Act of Aug. 10, 1939, c. 666; Tit. 42, U. S. C., Sec. 1101.

In the consideration of the extension of unemployment benefits to maritime labor, the value of subsistence was assumed to be part of wages. Hearings relative to the Social Security Act amendments of 1939 before the Committee on Ways and Means, House of Representatives, 76th Congress, 1st Sess., Vol. 3, p. 2497.

¹² Act of June 9, 1943, Int. Rev. Code, Tit. 26, U. S. C., Sec. 1621(a).

¹³ The definition used in the New York Act is typical:

Labor Law, Art. 18, Sec. 502, subd. 6

"6. 'Remuneration' shall mean every form of compensation for employment paid to an employee by his employer, whether

men's compensation laws.¹⁴ It is the principle followed in administrative rulings as well.¹⁵ English statutes apply the same definition.¹⁶ In the absence of explicit statutory direction, the courts have acted upon the same principle. *O'Callahan v. Dermody*, 197 Ia. 632 (1924); *Haas v. Globe Indem. Co.*, 16 La. App. 180 (1931); *Medland v. Haule Bros.*, 202 Mich. 532 (1918). English Courts have come to the same conclusion. *Liffen v. Watson*, 2 All England L. R. 213, 1940, C. A. The Court there, in an action for damages for personal injuries, considered whether the value of food and lodging received by a domestic servant should be included in the measure of special damage, and held:

" * * * if the judge at the new trial does come to the conclusion that this plaintiff's contract was that she

paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging or similar advantage received. Where gratuities are received by the employee in the course of his employment from a person other than his employer, the value of such gratuities shall be determined by the commissioner and be deemed and included as part of his remuneration paid by his employer. * * * "

Other state laws are collected in the appendix.

¹⁴ Workmen's Compensation Law, Art. 1, Sec. 2(9) (New York)

"9. 'Wages' means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer, or in the case of a volunteer fireman such money rate applying in his regular vocation or the amount of the regular earnings of such volunteer fireman in his regular vocation."

Other state laws are collected in the appendix.

¹⁵ Executive Order 9250, 1942, as amended by Executive Order 9281, 1943, Tit. VI, Sec. 2 (Relating to Wage Stabilization).

In computing the tax for old age benefits under the Social Security Act, to which seamen are eligible, the value of food and lodging is considered as an integral part of a seaman's compensation. Code of Fed. Reg., 1940 Supp., Sec. 403.827.

¹⁶ Workmen's Compensation Act, 1906, c. 58. The Act applies to seamen, *Rosenquist v. Bowing & Co., Ltd.*, 2 K. B. 108 (1908).

was to be paid a certain amount of cash and a certain amount in kind * * * then I see no reason why, in estimating the damage, the loss in kind should not stand upon the same footing as the loss in cash * * *."

Those statutes which do not exclude seamen from their application¹⁷ provide the same definition for a seaman's wages as they do for the wages of the employees in other industries.¹⁸ There is a paucity of reported cases in this country dealing with the question. The English courts, however, construing maritime laws bearing a close similarity to those adopted by Congress, have understood seamen's wages to include subsistence. *Dothie v. Macandrew & Co.*, 1 K. B. 803 (1908); *The Croxteth Hall*; *The Celtic*, 10 N. S. 184 (House of Lords).¹⁹

The inclusion of subsistence in wages is so generally accepted that Congress must be deemed to have intended the same meaning. *United States v. Merriam*, 263 U. S. 179 (1923).

C. The legislative intent was to measure damages under the statute in terms of the entire compensation to be paid to petitioners.

Examination of the statutes with which Section 594 is *in pari materia* reveals a pattern from which the legislative intent can be inferred. The incidents of maritime employment from hiring to discharge, including the manner and time of wage payments, are regulated.²⁰ The manifest pur-

¹⁷ Most unemployment insurance statutes exclude seamen, apparently because of the difficulty apprehended in determining when benefits should be paid. Hearings relative to Social Security Acts, *supra*, pp. 2488-2498.

¹⁸ E.g. The Wage Stabilization Act of 1942, *supra*, makes no special provision for maritime labor.

¹⁹ The majority opinion is silent on the inclusion of the value of subsistence in the judgment, but from the language of the dissent it is apparent that this was taken into account.

²⁰ Ch. 18, Tit. 46, U. S. C., Secs. 541-713.

pose is to assure to seamen reasonably just treatment. Crew members are given the right to part of their pay upon arrival at a port;²¹ full payment must be made immediately upon the conclusion of the voyage upon pain of drastic penalties;²² wages are no longer conditioned upon cargo.²³

There is no evidence of any intention to restrict the rights of seamen. The Congressional design was to broaden them in order to compensate, in some measure, for the hardships to which seamen are subject and to ameliorate the abuses to which they are peculiarly vulnerable. Among these, and not the least important, is the extremely casual character of maritime employment.²⁴ It was altogether consonant with Congressional concern for the welfare and protection of seamen to assure them that when they joined a vessel, they would earn at least the equivalent of one month's earnings. It is this that Section 594 accomplishes.

To effectuate its purpose, the statute should be construed to obtain for seamen who claim its benefits the same economic benefits they would have earned aboard ship—money payments and the value of the subsistence they would have received. Companion statutes distinguish between wages and provisions only for limited purposes. They do not purport to limit the meaning of wages as employed in Section 594. Section 591 merely declares when wages commence and when meals are to be furnished. Section 665 deals with provisions as wages. See *The John L. Dimmick*, supra.

²¹ Ibid. Sec. 597.

²² Ibid. Sec. 596.

²³ Ibid. Sec. 592.

²⁴ Report of Subcommittee on War Mobilization of the Committee on Military Affairs, pursuant to S. Res. 107, 78th Cong., 1st Sess., Oct. 7, 1943, p. 15.

Since the statute is concededly remedial,²⁵ its construction should be that which best lends itself to the fulfillment of its purpose. *Platt v. Union Pac. R. R. Co.*, 99 U. S. 48 (1879). To give to wages a restrictive meaning would not place petitioners in the position of having earned a month's wages. The amount of their cash remuneration is subject, while they are ashore, to the expenses of living, whereas on board ship it is received above all such expense. The Court below did not, therefore, award them one month's wages in the sense contemplated by the contract of employment, but a month's wages less the cost of subsistence. There is no evidence that Congress, which made the supply of provisions a contractual obligation, intended such a result.

In another context, the narrow construction given by the court below might be appropriate. Since it can best be fulfilled by resort to a broader definition, settled rules of statutory construction require that this be done. *Sacramento Nav. Co. v. Salz*, 273 U. S. 326 (1927); *United States v. Fowler*, 302 U. S. 540 (1938).

Construction of the Fair Labor Standards Act of 1938 presented a similar problem. The definition of wages there does not specifically mention gratuities received by employees from patrons, although it does include "the actual cost to the employer of the board, lodging or other facilities customarily furnished by him to his employees * * *."²⁶ Again, the legislative history does not reveal any specific expression of intent. Taking into account the true meaning of the contract of employment, this Court declared the tips received by red caps to be part of their wages. *Williams v. Jacksonville Terminal Co.*, 315 U. S. 386 (1942). In so doing, it ruled that the form taken by

²⁵ The Circuit Court so held, 141 Fed. (2) 191, at p. 193. See also *The Steel Trader*, supra, at p. 392; *Calvin v. Huntley*, 178 Mass. 29, 32.

²⁶ Fair Labor Standards Act, Sec. 3(m), Tit. 29, U. S. C., Sec. 203(m).

an employee's compensation was not the determining factor in the computation of his earnings; that the significant circumstance was whether it was received in return for services.

To apply the same test to petitioners' contracts can lead only to the conclusion that the value of their subsistence formed part of their wages and that a fair construction of Section 594 compels that it be enforced accordingly.

VIII

The Opinion of the Circuit Court Below Is in Apparent Conflict with a Decision of the Court of Appeals of Another Circuit

Section 597, Chapter 18, Title 46, United States Code, provides that the members of a ship's crew may demand half the wages they have earned each time they arrive at a port.²⁷ It held that no matter how designated, in a statute

²⁷ C. 18, Tit. 46, Sec. 597

"597. Payment at ports. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in, five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in the preceding section; *Provided further*, That notwithstanding any release signed by any seaman under section 644 any court having jurisdiction may upon good cause shown set aside such release and take such action as jus-

* Read here the matter bracketed on p. 18.

or in a contract, anything given in return for personal services is to be considered as wages (at p. 442). The Court cited as authority cases holding that food and lodging so furnished constitute wages.

This decision of the Court of Appeals for the Fourth Circuit conflicts with that of the Second Circuit in the case at bar. The war bonus in the *Lakos* case was payable in addition to the basic wage established by the contract of employment (*idem.*). Had the rule of construction applied by the Court below to Section 594 been followed there, the right created by Section 597 would be confined to basic wages. Affecting as it does rights and remedies important in the administration of laws relating to maritime labor, the conflict of decisions should be settled by this Court. Considering the question of bonus as a part of wages under this statute, the Circuit Court of Appeals for the Fourth Circuit arrived at a conclusion diametrically opposite in principle to that of the Circuit Court of Appeals in the case at bar. *Lakos v. Saliaris*, 116 Fed. (2d) 440.

CONCLUSION

Two reasons why a writ of certiorari should issue to the Circuit Court of Appeals for the Second Circuit are submitted by the petition herein. The proper construction of the statute involved is of great importance in maritime law. The rights of almost 200,000 men engaged in manning merchant vessels of the United States are involved.²⁸ This Court has never passed upon the question of the significance of the term "wages" as used in maritime law. The issue is important to the proper administration of the statute relating to seamen and should not be permitted to remain in doubt.

tice shall require; *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

²⁸ Report of Subcommittee on War Mobilization, *supra*, p. 14.

The antithesis of the positions adopted by two Circuit Courts of Appeal, an independent ground of jurisdiction, emphasizes the importance of the question and the need for a conclusive resolution of it. The petition for the writ should be granted.

Respectfully submitted,

WILLIAM L. STANDARD,
Attorney for Petitioners.

HERMAN ROSENFELD,
on the Brief.